

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**


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| |) | |
| |) | |
| COVANTAGE CREDIT UNION, |) | Civil Action No. 2:21-cv-12559 |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| BLUE CROSS BLUE SHIELD OF |) | |
| MICHIGAN MUTUAL |) | |
| INSURANCE COMPANY, |) | |
| |) | |
| Defendant. |) | |
| |) | |

**DECLARATION OF SHERRY AULIK IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY INJUNCTION**

1. I, Sherry Aulik, hereby declare as follows: I am an Executive Vice President of the Plaintiff, CoVantage Credit Union (“CoVantage”). I have been employed by CoVantage for 34 years. I am familiar with the business of CoVantage and make this Declaration in support of CoVantage’s Motion for Preliminary Injunction in this Action. If necessary, I could testify competently about the matters stated herein.

2. CoVantage was founded in 1952, and it has provided credit union services under the trademark COVANTAGE since at least as early as 2000. CoVantage’s use of the COVANTAGE trademark has been continuous since then. CoVantage operates the website www.covantagecu.org, to promote its wide range of services and has done so for many years.

3. CoVantage is the owner of U.S. Trademark Registration No. 2,976,076 for the mark

COVANTAGE CREDIT UNION, , used in connection with credit union services, in International Class 36. Said registration was registered on the Principal Register on July 26, 2005, with a first use date of December 20, 2000, and use in commerce on December 20, 2000. The “CREDIT UNION” portion of the mark was disclaimed. This registration is incontestable. A true and correct copy of a report from the Trademark Status and Document Retrieval (TSDR) database of the

United States Patent & Trademark Office (USPTO) for this mark is attached as Exhibit A.

4. CoVantage is the owner of U.S. Trademark Registration No. 5,051,308



for the mark **COVANTAGE CARES**, used in connection with charitable fundraising services, in International Class 36. Said registration was registered on the Principal Register on September 27, 2016, with a first use date of April 20, 2016, and use in commerce on April 27, 2016. The “CARES” portion of the mark was disclaimed. A true and correct copy of a report from the USPTO’s TSDR database for this mark is attached as Exhibit B.

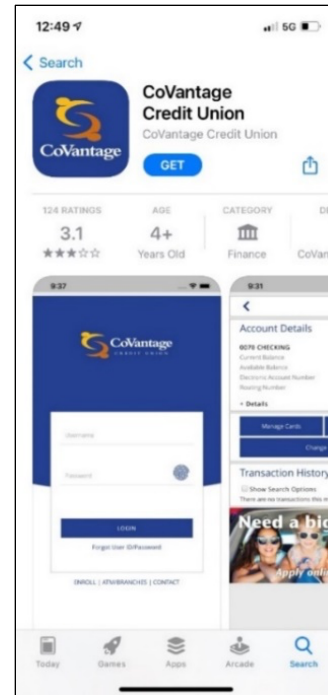
5. CoVantage has also used the mark COVANTAGE for more than 20 years. CoVantage has made regular and consistent use of the COVANTAGE mark in connection with a wide variety of credit union services, including on its brick-and-mortar locations and on advertising and other promotional material. Examples of the use of the COVANTAGE mark include the following CoVantage location in Antigo, Wisconsin, and Rothschild, Wisconsin:



Additionally, many other CoVantage physical locations use the COVANTAGE mark. For example, the following CoVantage locations in Wausau, Wisconsin, and Appleton, Wisconsin, respectively, prominently display the COVANTAGE mark:



6. Other examples of the use of the COVANTAGE mark include advertisements, such as the following advertisement that ran in the PRICE COUNTY REVIEW on at least May 17, 2018, and the CoVantage mobile app:



Attached as Exhibit C is a true and correct copy of the website https://marketplace.apg-wi.com/places/view/37354/co_vantage_retirement_investment_services.html, captured August 26, 2021, depicting the above-referenced advertisement in the PRICE COUNTY REVIEW.

7. Due to CoVantage’s extensive advertising and promotion, the word COVANTAGE points directly and immediately to CoVantage, and in my experience, serves to identify CoVantage in the eyes of customers and potential customers in Wisconsin, Michigan, and throughout the United States. Collectively, U.S. Trademark Registration No. 2,976,076, U.S. Trademark Registration No. 5,051,308, and the COVANTAGE marks used in commerce are referred to as the “COVANTAGE Marks.”

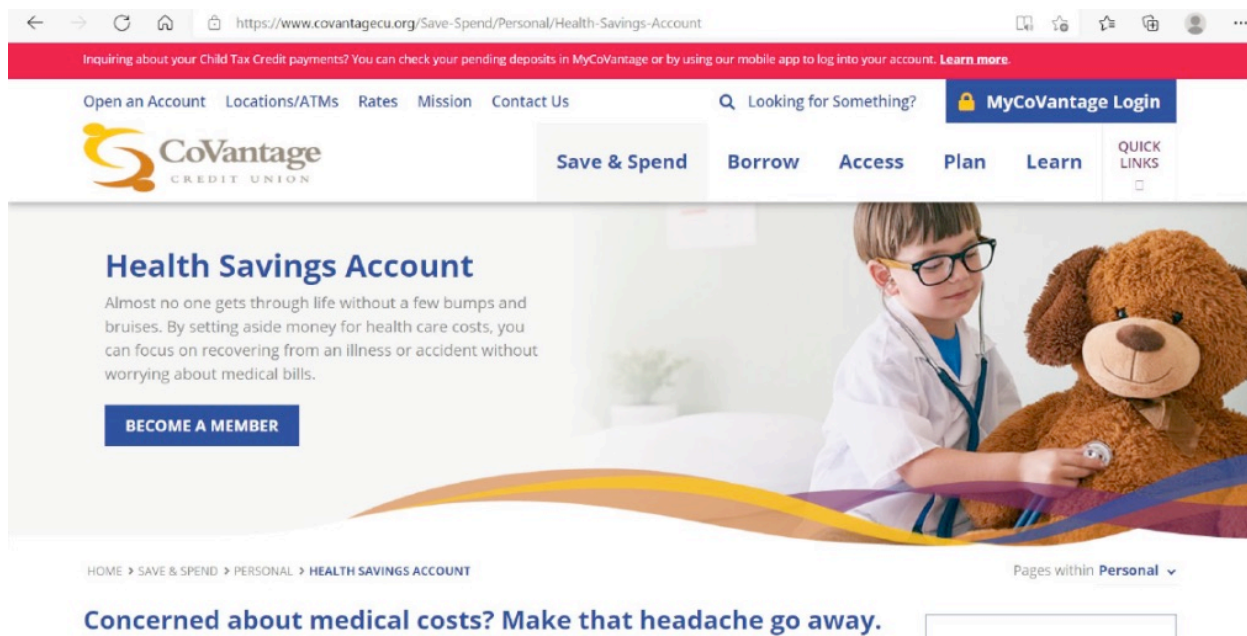
8. CoVantage holds over \$2.5 billion in assets and is in the top 3% (top 150 largest) of all credit unions nationally by asset size. CoVantage is also one of the 100 largest credit union business lenders in the country and holds over \$350 million in business loans.

9. CoVantage offers banking solutions, including fee-free checking accounts, savings accounts, auto loans, credit cards, mortgages, home equity loans, and more under the COVANTAGE Marks. CoVantage offers its services through the U.S. Mail; via telephone; through the internet, including via its website at www.covantagecu.org; through mobile banking apps, including the MyCoVantage mobile banking app; and in person through one of its nineteen (19) brick-and-mortar locations in Wisconsin and Michigan. CoVantage has brick-and-mortar locations in Crystal Falls, Iron River, and Menominee Michigan. These services are extensive. There are approximately 15 million logins to the MyCoVantage mobile app annually, and CoVantage members conduct over 15 million annual debit card transactions.

10. CoVantage offers these services to a wide range of customers, including both individuals and businesses. CoVantage currently has more than 135,000 individual and business members residing in all 50 states of the United States, some of whom are in the health care field or the insurance field.

11. In addition to typical banking services, the services CoVantage provides under the COVANTAGE Marks to businesses include, among other things, business savings accounts, business checking accounts, business loans for working capital and other expenditures, and a suite of services under the MyCoVantage Business name, including payroll and other business bill payments. CoVantage has offered these services under the COVANTAGE Marks since at least 2016. CoVantage also offers Health Savings Accounts to its employees and to employees of businesses throughout its charter.

12. In addition to typical banking services, the services CoVantage provides under the COVANTAGE Marks to individuals include, among other things, information and advice on loans, retirement planning tools, and Health Savings Accounts (<https://www.covantagecu.org/Save-Spend/Personal/Health-Savings-Account>) used to fund and pay the qualifying health insurance premiums and other qualifying health costs of members. An example of CoVantage's use of the COVANTAGE Marks in connection with Health Savings Accounts is as follows:



13. A significant number of CoVantage’s members qualify for and/or receive Medicare health insurance provided by the Social Security Administration, and they are eligible for and/or purchase Medicare Supplement plans and/or Medicare Advantage plans. Many CoVantage members take advantage of CoVantage’s automated clearinghouse (ACH) and bill pay solutions to make and receive payments, debits, and credits to and from Medicare and other health and insurance providers.

14. Among CoVantage’s business members are several companies in insurance-related industries. Based on a review of business records, maintained in the ordinary course of business, CoVantage serves approximately 40 business members in insurance-related industries. These include insurance agencies, insurance services, and an insurance trust.

15. Among CoVantage's individual members are many individuals who are employed in insurance-related industries. Based on a review of business records, maintained in the ordinary course of business, CoVantage serves approximately 588 individual members who are employed by insurance-related businesses. These businesses include insurance companies, insurance agencies, insurance services, insurance groups, and insurance providers.

16. CoVantage operates the CoVantage Cares Foundation, which in 2020 alone disbursed nearly \$600,000 to worthy non-profits in the communities served by CoVantage, including more than \$200,000 dedicated to the area of health and safety. Since its inception in 2016, the CoVantage Cares Foundation has provided nearly \$2 million in grants, including more than \$500,000 dedicated to the area of health and safety.

17. Callahan & Associates, an industry research firm, recently ranked CoVantage first in the nation—out of 5,207 credit unions—for returning value back to members in the form of great rates and low fees in 2020. In addition, CoVantage was ranked the best credit union in Wisconsin by Forbes in June 2021 and has been ranked in the top 50 best performing credit unions in the country by S&P Global Market Intelligence.

18. The COVANTAGE Marks not only have been used by CoVantage in Wisconsin and Michigan, but also are recognized throughout the United States. The

COVANTAGE Marks have been advertised and promoted by CoVantage and its affiliates and have developed and represent valuable goodwill.

19. Since at least 2016, CoVantage has spent in excess of \$1 million annually advertising its services in connection with the COVANTAGE Marks. CoVantage extensively advertises its services through all traditional media, including but not limited to television, print, radio, signage, and online channels. CoVantage advertises using Google, Facebook, YouTube, Instagram, Pandora, and Yahoo. CoVantage has a YouTube channel, a Facebook page, an Instagram profile, and a LinkedIn profile, which it uses to connect with its existing members and to find new members. CoVantage prominently uses the COVANTAGE Marks in connection with its printed and promotional material, which include pens, clothing, giveaways, business cards, letterhead, envelopes, newsletters, statements, newspaper and magazine advertisements, and insurance mailings. CoVantage also uses the COVANTAGE Marks in connection with its sponsorship of events and non-profit organizations throughout Wisconsin and Michigan. CoVantage's advertising makes prominent use of the COVANTAGE Marks, and it has done so continuously since the COVANTAGE Marks were adopted.

20. CoVantage directs its advertising and promotion under the COVANTAGE Marks to businesses of all types and industries, including insurance-

related businesses, such as insurance companies, insurance agencies, insurance services, insurance groups, and insurance providers.

21. To my knowledge, CoVantage's use of the COVANTAGE Marks is currently exclusive. To my knowledge, the only other use in commerce of the term "covantage" in connection with the offering of goods or services is the intended use by the Defendant, Blue Cross Blue Shield of Michigan Mutual Insurance Company ("Blue Cross") and its affiliates.

22. I understand that Blue Cross filed applications with the USPTO seeking registration of the trademarks COVANTAGE HEALTH PARTNERS & Design (U.S. Application Serial No. 88/677253) and COVANTAGE HEALTH PARTNERS (U.S. Application Serial No. 88/677258) (collectively "the Blue Cross applications") for use in connection with "[h]olding company services, namely, business management and business administration services for others in the health and managed care insurance industries; providing financial records management for others in the health and managed care insurance industries" in International Class 35, and "[p]roviding financial management services for others in the health and managed care insurance industries; providing investment capital funding for others in the health and managed care insurance industries" in International Class 36.

23. Blue Cross does not have permission or authorization from CoVantage to use the COVANTAGE Marks or the term "covantage" in any form.

24. Both the COVANTAGE Marks and the Blue Cross applications use the identical made-up word COVANTAGE as the dominant portion. I believe that the Blue Cross applications seek to register marks that are confusingly and deceptively similar to the COVANTAGE Marks.

25. The Blue Cross applications specifically identify “providing financial records management,” “[p]roviding financial management services,” and “providing investment capital funding.” The Blue Cross applications state that they intend to provide such services to others in the health and managed care industries, which is an industry to which CoVantage already provides its own financial services under its COVANTAGE Marks.

26. In my experience, customers are aware of the close, and often overlapping, relationship between insurance companies and financial services. If Blue Cross or its affiliates offer “financial records management,” “financial management services,” “investment capital funding,” or other services under the Blue Cross applications, these activities are likely to create confusion in the marketplace and risk creating deception among consumers who may falsely believe that the services provided under the Blue Cross applications come from, are approved by, are sponsored by, are a line extension of, or are managed by CoVantage.

27. As one of the nation's leading credit unions, CoVantage's reputation is of particular importance. CoVantage will be significantly harmed if Blue Cross or its affiliates are permitted to use the Blue Cross applications or any other trademarks including the term "covantage." The potential harm to CoVantage due to negative news or negative press about Blue Cross or its affiliates would be enormous. Likewise, CoVantage will not be able to control the use of the Blue Cross applications by Blue Cross or its affiliates, and it is at significant risk if Blue Cross or its affiliates offer unsatisfactory services under the Blue Cross applications. These immediate and irreparable harms would place the significant investment and reputation of CoVantage at risk and would diminish the goodwill associated with the COVANTAGE Marks.

28. CoVantage has a duty to its 135,000 members, and to those who trust it to safely hold their deposits, to protect those assets and keep them from harm. CoVantage has spent over a half century building trust and creating its reputation as a trustworthy and safe financial institution. I believe there is a real and palpable risk that another company, such as Blue Cross or its affiliates, operating in or near our field of enterprise under a similar name could quickly damage or destroy that reputation. This would understandably cause fear and undue concern among our members and depositors, and it could cause them to question leaving their money

with CoVantage. If negative publicity about Blue Cross appeared in the media, or online, CoVantage would suffer a significant loss and injury.

The undersigned hereby declares under penalty of perjury of the laws of the United States that all statements made herein are true, or if made on information and belief, are believed to be true.

Date: November 3, 2021


Sherry Aulik